

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:08-00014

DAVID DEAN BUZZARD, JR.

MEMORANDUM OPINION AND ORDER

Pending before the Court are Defendant's Objection to the Court's Order Granting Payment from Inmate Trust Account (ECF No. 142) and Motion Seeking Reconsideration of the Court's Order Granting Plaintiff's Motion to Authorize Payment from Inmate Trust Account (ECF No. 149).

Defendant, David Dean Buzzard, Jr., pled guilty to a single count of conspiracy to commit an offense against the United States in violation of 18 U.S.C. § 371. ECF No. 32. On May 28, 2008, this Court sentenced Defendant to a total of sixty months imprisonment and three years of supervised release. ECF No. 41. Defendant was also ordered to pay \$12,000 in restitution and a \$100.00 special assessment, with interest waived. *Id.* On May 30, 2008, Defendant's judgment was amended for restitution to be paid "jointly and severally with Jacques Cleon Wooten (3:07-00214)," though all other terms of the judgment remained unchanged. ECF No. 43. On May 12 and May 13, 2021, Defendant filed a Motion to Correct his Sentence on Fourteenth Amendment Grounds (ECF No. 111) and an Amended 28 U.S.C. § 2255 Motion based on the same claims (ECF No. 114).

On October 5, 2021, the United States Attorney's Office for the Southern District of West Virginia ("USAO") was informed that Defendant had substantial funds in his inmate trust account maintained by the Bureau of Prisons ("BOP"). On the same day, the USAO motioned to authorize payment from that same account and sought a turnover of all funds in it but \$300.00 as payment towards the defendant's outstanding restitution pursuant to 18 U.S.C. § 3644(a) and (n). ECF No. 139. On October 6, 2021, this Court granted the Motion for Payment. ECF No. 140.

On October 18, 2021, the Defendant filed: (1) Letter to Clerk, dated 10/13/21 (ECF No. 141); (2) Combined Response in Opposition to Plaintiff's Motion to Authorize Payment from Inmate Trust Account, Motion for Reconsideration, and Objection to Court's Order (ECF No. 142); and (3) Notice of Appeal (ECF No. 143). On October 21, 2021, Defendant filed an additional Response in Opposition (ECF No. 148) and Motion Seeking Reconsideration (ECF No. 149). The USAO became aware of Defendant's receipt of at least \$3,625.87 in settlement proceeds while incarcerated that he has already spent or diverted, without applying the funds towards his restitution balance. On October 29, 2021, the Clerk of Court received \$1,044.54 from Defendant's Inmate Account as a result of the Court's Order authorizing the same. ECF Nos. 140, 152. A temporary hold has been placed on the funds to prevent disbursement to Defendant's victims until the resolution of the pending matter. Govt.'s Resp. at 3, ECF No. 153.


Mr. Buzzard raises a variety of objections, alleging that the Court has abused its discretion and violated the Federal Rules of Criminal Procedure and the Constitution by authorizing the withdrawal of funds without a response from the Defendant. Def.'s Mot. at 2-3, ECF No. 149. He suggests that this payment is not in accordance with the terms of restitution ordered by his amended judgment, because it provides for restitution payments in installments of \$25.00 per quarter. *Id.* at 3. The Government contends that this Court had jurisdiction to order the turnover of

a portion of his account and that Defendant's Notice of Appeal transferred jurisdiction of the subject matter to the appellate court. Govt.'s Resp. at 2-3.

First, the Court notes that an order imposing restitution is a final judgment. *See* 18 U.S.C. § 3664(o). Even though Defendant has a 28 U.S.C. § 2255 motion pending, the order for restitution was final and the Court retained jurisdiction over its enforcement. *See id.* However, a notice of appeal filed simultaneously with a motion for reconsideration divests a district court or jurisdiction. *See United States v. Christy*, 3 F.3d 765, 768 (4th Cir. 1993) (“[It is] generally understood that a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”) (citation omitted). Here, Defendant's Notice of Appeal of the Court's order authorizing payment from his inmate account was docketed on the same day as his Motion for Reconsideration. Accordingly, this Court has been divested of jurisdiction. For these reasons, the Court must **DENY** Defendant's Motions.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: November 17, 2021

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE